

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7226 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHAHADUER SINHJI M VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR AM RAVAL for Petitioners

MR VB GHARANIYA, AGP for Respondent No. 1 & 2

MR PK JANI for respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/1999

ORAL JUDGEMENT

#. The petitioners, employees of the Panchayat converted from municipality states that they are beneficiaries of the judgment given by this court in the case of R.K.Soni Vs. State of Gujarat in Special Civil Application No.309/75 decided on 28/1/1997, which was confirmed by the Hon'ble Supreme Court of India in Civil Appeal No.359/78.

#. They were the employees of ex-municipality, which is later on converted in the Panchayat and were allocated to the Panchayat services under the Government resolution.

#. The petitioners urge that this court in the case of R.K.Soni Vs. State of Gujarat (Supra) decided that panchayat servants are Government servants and they are entitled to all the benefits, which are available to the Government servants.

#. The claim of the petitioners in this special civil application pertains to the difference of arrears of the fixation of their salary in the revised pay scale as recommended by the 4th Pay Commission. The petitioners pray first for declaration that they are entitled to all the benefits of pay scale as revised as per 4th Pay Commission Report. Second that the respondents be directed to pay to the petitioners the arrears as a result of the fixation of their pay in revised pay scale with interest @18%p.a.

#. On the record of this special civil application reply affidavit of any of the respondents is not there. Learned counsel for the respondent Nos. 1 & 2 admits that on their behalf reply affidavit is not filed. The learned counsel for the respondent No.3 states that reply affidavit is filed on behalf of the respondent No.3. The carbon copy of the same is given to the court during the course of the arguments.

#. The learned counsel for the respondent No.3 gives out that if the petitioners are entitled for the benefits of the recommendation of 4th Pay Commission, they are being the employees of the converted Municipalities would be a part of the State Government staff and they would be considered on the civil posts. The petitioners, therefore, being on the civil posts would be the servants of the State Government, no doubt employed by the Nagarpalika and, therefore, the benefits, if any accrued to the petitioners would be payable by the State Government and not by the Nagarpalika. In sum and substance the respondent No.3 does not dispute the claim of the petitioners on merits. But dispute raised is only that it is the liability of the State Government to pay all these benefits to the petitioners.

#. By way of draft amendment the petitioners have brought on record of this special civil application the subsequent developments which have been taken place i.e. the reply, which was given by the respondent No.3 to the legal notice sent by the petitioners. Whatever the

learned counsel for the respondent No.3 contended is the very basis of the reply given by it to the notice of the petitioners.

#. So far as the respondent Nos. 1 & 2 are concerned conspicuously they shown their total non-cooperative attitude despite of notice has been given in this petition to them returnable on 14/10/1997, then it was admitted on 25/11/1997 and on 23/6/99 though the court has considered there is no justification in the prayer made by the counsel for the respondent Nos. 1 & 2 for grant of time to file reply to the special civil application but, court has considered it to be necessary to have reply from the respondents and accordingly time was granted to them to file reply. It is really shocking and surprising that despite of the desire of the court they have not cared to file the reply.

#. The learned counsel for the respondent Nos. 1 & 2 is totally unable to satisfy this court how the petitioners are not entitled for the benefits of the 4th Pay Commission Recommendation. In fact, by not filing the reply, the respondent Nos. 1 & 2 have accepted the claim of the petitioners. The court as said earlier desire the reply affidavit of the respondent Nos. 1 & 2 but they have not cared to file the same, that goes to show that they have no case to defend the claim of the petitioners and/or they accepts this claims of the petitioners by silence. It is not gain say that silence is sometimes the best answer.

##. As a result of the aforesaid discussion, this special civil application deserves to be allowed and accordingly it is allowed. It is hereby declared that the petitioners are entitled for the benefits of the 4th Pay Commission Recommendation. The respondent No.2 is directed to pass order sanctioning the benefits of the 4th Pay Commission Recommendation to the petitioners, fixation of their pay and determination of the arrears as a result thereof which are found payable to them and be paid to the petitioners. All these exercises shall be undertaken and completed within a period of 3 months from the date of the receipt of the writ of this order. The petitioners are entitled for the interest on the arrears of the fixation of the their pay in the revised pay scale @12% from the due date. The respondent Nos. 1 & 2 to pay Rs.500/- to each petitioner towards the costs of this petition. This amount be paid to the petitioners by account payee draft in their individual name. The respondent No.1 is at liberty to decide which of the two, the State Government or respondent No.3 is liable to

discharge this liability and if ultimately if it is found that the respondent No.3 is to borne out this liability, whatever the amount paid by the respondent No.1 to the petitioners be recovered from the respondent No.3.

Rule is made absolute in the aforesaid terms.

(S.K.Keshote, J.)

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